

LAW OFFICES OF CARL M. VARADY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

ELIZABETH G. as Guardian Ad
Litem of COURTNEY G., an
incompetent minor, and MICHAEL
P.,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAI'I,

Defendant.

CV08-00146 HG/BMK
(Other Civil Action)
FIRST AMENDED
COMPLAINT

FIRST AMENDED COMPLAINT

Plaintiff ELIZABETH G., Individually and as Guardian Ad Litem of
COURTNEY G., an incompetent minor, and MICHAEL P. for their First Amended
Complaint against Defendant STATE OF HAWAI'I, DEPARTMENT OF
EDUCATION, state the following:

CLAIMS FOR RELIEF

1. This is a civil action arising under, Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§1400-1487 and its implementing regulations, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 and its implementing regulations. This Court has jurisdiction over plaintiff's federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and all conditions precedent to the exercise of jurisdiction have been satisfied.

2. Venue in this district is proper under 28 U.S.C § 1391(b). All Defendants reside and the claims arose within the District of Hawai'i.

3. Plaintiff, COURTNEY G., is the minor daughter of ELIZABETH G., and a resident of Honolulu, Hawaii at the time the events giving rise to this cause took place. She is proceeding under a pseudonym to protect her privacy and to avoid further aggravating her disability.

4. Plaintiff ELIZABETH G., is the mother of COURTNEY G., and was a resident of Honolulu, Hawai'i at the time the events giving rise to this cause of action accrued. She has been appointed as guardian ad litem in this action for COURTNEY G., and is proceeding under a pseudonym to protect her and her daughter's privacy.

5. Plaintiff MICHAEL P., is the grandfather of COURTNEY G., and was a resident of Honolulu, Hawaii at the time the events giving rise to this

cause of action accrued. He is proceeding under a pseudonym to protect his and his granddaughter's privacy.

6. MICHAEL P., with whom COURTNEY G., resides, is a "parent" for purposes of the IDEA under 20 U.S.C. § 1401(23) and 34 C.F.R. § 300.30.

7. MICHAEL P., is employed by the Hawai'i Department of Education as a Student Services Coordinator, who coordinates services of students eligible to receive special education and related services under IDEA. MICHAEL P., is employed at the school COURTNEY G., attends.

8. Defendants have been informed of all plaintiffs' identities.

9. Defendant STATE OF HAWAI'I, is a body politic, charged with providing special education and related services under IDEA to COURTNEY G.

10. An evidentiary hearing was held pursuant to 20 U.S.C. § 1415, on August 29-31, September 21 and December 12, 2007, before the Hawai'i Office of Administrative Hearings, Department of Commerce and Consumer Affairs, in which Plaintiffs sought a ruling that the Defendant had denied COURTNEY G. free appropriate public education ("FAPE"), and, in particular, that she was eligible for special education and related services under IDEA under the category of specific learning disability, because of her dyslexia.

11. On February 29, 2008, the hearing officer issued his Findings of Fact, Conclusion of Law and Decision (the “Decision”).

12. Plaintiffs are parties aggrieved by the Decision, as defined by 20 U.S.C., § 1415(e), 34 C.F.R., § 300-512 and § 8-56-77, Haw. Admin R.

13. Plaintiffs seek de novo review and reversal of the Decision and assert that the DOE has failed to provide FAPE to COURTNEY G.

14. Defendant has violated both the procedural and substantive provisions of IDEA and Section 504 and their implementing regulations.

15. Defendant’s actions constitute unlawful retaliation against MICHAEL P. for seeking special education and related services for his granddaughter, COURTNEY G.

16. Defendant’s actions have caused Plaintiffs immediate and irreparable harm.

17. Plaintiffs assert that DOE denied COURTNEY G. FAPE and the Decision is in error and should be reversed.

18. Defendant’s action has caused Plaintiffs damages for which they can recover under Section 504 and its implementing regulations..

WHEREFORE, Plaintiffs pray for relief as from the Court as follows:

1. A ruling that COURTNEY G. is eligible for special education and related services under IDEA and was denied FAPE;

2. Reversal of the hearing officer's Decision that COURTNEY G. was not eligible for special education and related services was not denied FAPE;
3. Awarding Plaintiffs damages for violation of their civil rights arising under Section 504 and its implementing regulations; and
4. Declaring that Plaintiffs are prevailing parties under 20 U.S.C. § 1415(f), and therefore entitled to their attorneys' fees and costs incurred in this action.

Dated: Honolulu, Hawai'i, November 7, 2008.

/s/ Carl M. Varady

CARL M. VARADY

Attorney for Plaintiffs